SCOTTISH STATUTORY INSTRUMENTS

2003 No. 66

SEA FISHERIES

The Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment Order 2003

Made - - - -	*6th February 2003*
Laid before the Scottish Parliament - - - -	*6th February 2003*
Coming into force - -	*7th February 2003*

The Scottish Ministers, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(**1**) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment Order 2003 and shall come into force on 7th February 2003.

Amendment of the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2003

2.—(1) The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2003(**2**) is amended as follows.

(2) In article 3 (absence from port)–

(a) in paragraph (1), for "Subject to article 4, a", substitute "A";

(b) for paragraph (7), substitute–

"(7) Where, notwithstanding article 4 and subject to article 6A, during any period a relevant British fishing boat has–

(a) been absent from port carrying fishing gear in excess of the days permitted to it by this article; or

(**1**) 1981 c. 29; relevant modifications are contained in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I.1999/1748), article 5 and the Scotland Act 1998 (Modifications of Functions) Order 1999 (S.I. 1999/1756), articles 3, 5 and 6. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). See section 30(3) for a definition of "the Ministers". Section 30(2) has effect in relation to Scotland as modified by section 30(5). Section 30(5) was inserted by the Scotland Act 1999 (Consequential Modifications) (No. 2) Order (S.I. 1999/1820), Schedule 2, paragraph 68.

(**2**) S.S.I.2003/56.

(b) purported to transfer days in accordance with article 6 in excess of its unused days,

the Scottish Ministers may in respect of a relevant period falling after the date of a determination by them to that effect, deduct from its basic number a number equal to the number of days in that excess.";

(c) in paragraph (9), for "paragraph (8)" substitute "paragraphs (7) and (8)"; and

(d) in paragraph (10), for "the donor was not entitled to transfer the days", substitute "transfer from the donor of those days was not permitted".

(3) For article 6(3) (circumstances where transfer of days is not permitted), substitute–

"(3) A transfer is not permitted if–

(a) within the same period, there has already been purported to be transferred in respect of the donor any number of days to a recipient;

(b) the donor has been decommissioned within the meaning of article 7 of Council Regulation 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector(**3**), as last amended by Council Regulation (EC) No 2369/2002 of 20th December 2002(**4**); or

(c) it relates to the gear defined in paragraph 4(a) of Annex XVII and the donor has not, within the same period, fished with that gear in any of the areas defined in paragraph 2 of Annex XVII,

except, in respect of paragraphs (a) or (c) above, on cause shown to the satisfaction of the Scottish Ministers .".

(4) After article 6, insert–

"**Procedure as to decisions to deduct days**

6A.—(1) In making a decision to deduct days under article 3(7), the Scottish Ministers–

(a) shall specify which relevant period the days deducted will relate to;

(b) shall only make such a decision in relation to a relevant period starting after the date of their decision; and

(c) may deduct days in respect of one or more than one relevant period, as they consider fit.

(2) The Scottish Ministers, before making a decision to deduct days under article 3(7), shall–

(a) give the affected person a written notification of that intention (including a note of the relevant period or periods to which that deduction is proposed to apply) and an explanation of the reasons for considering the deduction of days (and the basis for proposing the deduction from a particular relevant period or periods);

(b) afford that person an opportunity of making representations in that regard within such time and in such form as they think fit and, in order to effectively give such opportunity, may appoint a person ("the reporter") to report to them as to the relevant factual circumstances; and

(c) consider any such representations (including the report prepared by the reporter) in making their decision in the case.

(3) In this article–

(**3**) O.J. No. L 337, 30.12.99, p.10.
(**4**) O.J. No. L 358, 31.12.02, p.49.